IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1438 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
HARSHADBHAI VIHABHAI PATEL & 1 - Respondent(s)

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Appearance :
MR PD BHATE, ADDL. PUBLIC PROSECUTOR for Appellant(s)
None for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 13/08/2007

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE J.R.VORA)

1. This Appeal is preferred by the State under

Section 378 of the Code of Criminal Procedure against the judgment and order delivered by Presiding Officer, Fast Track Court, District: Banaskantha at Palanpur, on 23rd March, 2006, whereby both the respondents herein came to be acquitted by the trial Court for the offences punishable under Sections 323, 504 and 114 of the Indian Penal Code as well as for the offence punishable under Section 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. According to prosecution case, complainant-Kalubhai Hardasbhai Harijan, residing at village Kumar, was an agriculturist. On 30th November, 2004, at about 12:00 noon, the complainant and his wife Shantaben went to the accused at their field and asked for their third portion of profit from agriculture but both the accused insulted them as to their caste and had beaten both of them with sticks and fists. The complainant

and his wife started shouting and therefore, their nephew Arjanbhai Motibhai reached at the scene of offence. Complainant approached Panthawada Police Station on 1st December, 2004, at about 18:30 hrs. and gave his compliant which was registered before Panthawada Police Station vide Crime Register No.II-88/2004. PW 8 - Ashwinkumar Jamnadas Gondalia recorded the complaint and took charge of investigation. Further investigation was thereafter entrusted to Deputy Superintendent of Police, PW 9 – Gunvantgiri Lalugiri Goswami. He recorded the statements of witnesses, verified the Panchnama as drawn by the earlier investigating officer, the complainant was sent for medical treatment, a certificate of caste was obtained and chargesheet was filed in the Court of Judicial Magistrate, First Class, Dhanera, for the above said offences against both the respondents. The said case was registered as Criminal case No.828/2004 and was committed to the Court of Sessions

and was registered as Special Case No.14/2005 in the Court of Sessions.

3. Learned Presiding Officer, Fast Track Court, Palanpur, framed charges for the above said offences against both the accused-respondents vide Ex.5 on 5th September, 2005, to which both the respondents pleaded “not guilty”.

4. Prosecution examined nine witnesses to prove its case and produced on record, injury certificate, Panchnama of scene of offence, complaint, and certificate of caste in respect of the complainant. On evidence being over, further statements of both the respondents were recorded by the trial Court and denying the case of the prosecution in toto, both the respondents further stated that the complainant though was their partner and complainant was given amount by way of loan by them, and when the said amount was demanded, a frivolous case was filed against them. The learned trial Judge, after hearing both the sides, came to the above conclusion

and hence this Appeal.

5. Learned APP Mr.Bhate for the State submitted that there are eye-witnesses of the incident and complainant is an injured witness and therefore, the Appeal requires admission and consideration. It is submitted that a prima facie scrutiny is required for the appreciation of evidence undertaken by the trial Court to come to the conclusion of acquittal. It is submitted that at this stage, sufficient it is to ascertain whether there is prima-facie case made out by the State for consideration.

6. We have heard learned APP in detail and we have gone through the Record and Proceedings of the trial Court which is available with us. At this stage also, we have undertaken scrutiny of vital features of the case, reasonable probabilities arising out of the evidence recorded and the reasons recorded by the trial Court for the acquittal.

7. Necessary it is to consider gist of evidence recorded during the trial to appreciate the reasons recorded by the trial Court for the acquittal. PW 1 examined at Ex.12 is complainant – Kalubhai Hardasbhai Harijan and he stated that on the day of incident, while he was in his field, both the accused directed him to get out of the field and thereafter he was beaten. For the cause of dispute, he stated that in the field of the accused, he was partner and profit was not given to him and therefore, he filed the compliant. He also stated that both the accused gave him abuses. He confirmed his complaint placed at Ex.27. In his examination in cross, he admitted that he gave complaint after two days after the incident and along with him, his nephew Arjanbhai Motibhai came with him. Shankarbhai Karsanbhai and Mahadevbhai Pirabhai also were present when he gave the complaint. PW 2 – Ex.21 Rameshbhai Motibhai stated that his uncle Kalubhai Hardasbhai had conveyed him about

the incident. Contradiction in his evidence is proved which is found in paragraphs 8, 11 and 12 of his deposition. PW 3 – Arjanbhai Motibhai, who is also the nephew of complainant, is examined at Ex.15. According to prosecution, he is the eye-witness and he stated that on the day of incident, he had been to the field of respondent No.2 and found that both the accused were abusing the complainant and he intervened. He stated that nothing else had taken place. In his examination in cross, in paragraph 5, he stated that his statement was not recorded by Police and he did not know that who in fact gave statement before the Police on his behalf. Contradictions were asked in paragraph 7 of his deposition. PW 4 – Shantaben Kalubhai, wife of complainant, has been examined at Ex.16 and according to her, on the day of incident, she and her husband were in the field of respondent No.2 and when they asked their third part of profit, both the accused abused them and uttered words

insulting their caste. According to her, both the accused had beaten them with fist and thereafter, they had been to hospital for treatment. In her examination in cross, she has admitted that Civil Suit was pending against her husband for recovery of amount of Rs.15,000/- filed by accused No.1. Contradictions were asked by the defence in cross-examination vide paragraphs 9 and 10. PW 5 - Dr.Raghvansh Paswan is examined by the prosecution vide Ex.18. According to him, he had examined complainant Kalubhai with Police Yadi on 2nd December, 2004 at 3:45 p.m. In hospital the complainant stated before this witness that he was physically assaulted and had pain in abdomen as well as in his back. According to this witness, on examination, nothing was found like swelling or tenderness. He was given treatment of Analgesic for three days. The witness produced on record, certificate issued by him at Ex.19. He stated that the injuries for which the patient was complaining appear to

have been caused by boxing. PW 6 – Ukabhai Chehrabhai Harijan, examined by prosecution at Ex.21, is Panch of scene of Panchnama produced at Ex.22. PW 7 – Shankarbhai Karsanbhai Gohil, examined at Ex.23, is also a witness to whom the complainant had conveyed about the incident. He appears not to be an eye-witness. PW 8 examined at Ex.25 - Ashwinkumar Jamnadas Gondalia, was the then PSI, Panthawada, who, in inception investigated the offence while PW 9 examined by prosecution at Ex.28 – Gunvantgiri Lalugiri Goswami, was the then Deputy Superintendent of Police, who had taken charge of investigation from PW 8 and had filed the chargesheet.

8. From the above evidence, learned trial Judge came to the conclusion that there were contradictions in the evidence of witnesses. Learned trial Judge recorded that in the evidence of complainant, it was found that he omitted to state anything about the insulting

utterings by the accused about the caste. He stated to the extent that the accused had beaten them and directed them to get out of the field. PW – Rameshbhai Motibhai is not an eye-witness and he came to know about the incident only from the complainant while PW 3 – Arjanbhai Motibhai stated to the extent that while he reached at the field of accused No.2, he found that both the accused were giving abuses to the complainant and this witness stated nothing further about the incident, while PW 4 – wife of the complainant – Shantaben, stated that the accused insulted their caste, gave abuses and had beaten both of them. Thus, on appreciation of evidence, trial Court found contradictions amongst the witnesses. Out of them, two witnesses are not eye-witnesses while the manner in which the incident has occurred has been stated by three witnesses, i.e. PW 1, PW 3 and PW 4 in different manner and in contradiction. Complainant had in fact no injury and according to trial Court, from

the evidence of PW 5 – Dr.Raghvans Paswan, he had given history of physical assault and did not give names of the accused. The complainant reached to the hospital only on 2nd December, 2004, at 3:45 p.m. where he made a complaint about pain in the back and abdomen. The complaint is filed late, i.e. on 1st December, 2004 at 18:30 hrs. while the incident had occurred on 30th November, 2004 at 12:00 noon. No reasons or grounds for delay caused in filing the FIR could be explained by the prosecution. The trial Court noted that with this background of evidence, it must be noted that all the witnesses of the incident happened to be relatives of the complainant and their evidence cannot be relied upon in view of the above circumstances after careful scrutiny. The trial Court also recorded further that it was an admitted fact that accused No.2 had filed a Civil Suit against the complainant for the recovery of amount which was lent by accused No.2 to complainant. The learned trial Judge

therefore, after appreciating all the above circumstances, came to the conclusion of acquittal of the accused.

9. We have, as aforesaid, scrutinized the evidence and reasons recorded by the trial Court. This is an Appeal against the order of acquittal. The law is settled that in Appeal against acquittal, mere fact that a view other than the one taken by the trial Court can legitimately be arrived at by the appellate Court on re-appraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless the appellate Court comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by the trial Court were wholly untenable. Unless and until the reasons recorded by the trial Court are found palpably wrong, manifestly erroneous or demonstrably unsustainable, no interference

is permitted in orders against acquittal.

10. After careful scrutiny of the reasons recorded by the trial Court for the acquittal as aforesaid, we come to the conclusion that the view taken by the trial Court for the acquittal is plausible, probable and proper in the facts and circumstances of the case. Mainly the trial Court acquitted the accused because evidence of the witnesses was in contradiction, FIR was filed late, there was enmity between the parties about the recovery of amount and the fact that all the witnesses were near relatives of the complainant. In this view of matter, it could not be said that the reasons recorded by the trial Court are erroneous, palpably wrong or demonstrably unsustainable. We do not find any merit in this Appeal even at this stage and hence, the following order.

11. Leave to Appeal refused. Appeal stands dismissed.

(J.R.Vora, J.)

(Smt.Abhilasha Kumari, J.)

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